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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 227 OF 2018**

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Maruti Malhari Lomate

... Appellant

vs.

Shahaji Bhagwan Lomate

... Respondent

Mr. Sachinkumar P. Rajepandhare, for Appellant.

CORAM : GAURI GODSE, J.

DATED : 2nd AUGUST 2024

ORDER:

1. Heard learned counsel for the appellant. This second appeal is filed by the original defendant to challenge the concurrent judgments and decrees of injunction in favour of the plaintiff. The suit filed by the respondent for declaration and injunction is decreed directing that the common water well and the trees, as described in the operative order of the trial court's judgment, is a common property, and the defendant shall not create any obstruction for the use of the same by the plaintiff. The said decree is confirmed by the First Appellate Court in the appeal preferred by the defendant.

2. Learned counsel for the appellant submits that the appellant

has no objection to the injunction as granted. However, the appellant is aggrieved by the observation regarding the land around the well and the trees held to be kept common. Learned counsel for the appellant further submits that the Second Appeal raises substantial question of law as to whether the water well and the trees being kept common can mean that the plaintiff also has a common interest in the land.

3. I have considered the submissions made on behalf of the appellant. Perused the papers of the Second Appeal. Both the courts have concurrently held that the plaintiff is entitled to a common use of the well, the common trees, and the water stream. A perusal of the reasons recorded by both the courts indicates that the revenue records show entries about the land as well as the use of the water well and trees as common. The revenue records relied upon by both the courts were never challenged. The concurrent findings on the plaintiff's right to use the water well and the trees, including the water stream, are based on the undisputed revenue record.

4. The First Appellate Court, after re-examining the documentary as well as oral evidence, has confirmed the findings recorded by the trial court. The First Appellate Court has also referred to the

pleadings in the written statement and the evidence of defendant's witness regarding the family partition and the existence of a common well in land Gat No. 748, and the plaintiff's right to lift the water from the common well. Considering the reasons recorded by both the courts with regard to the partition between the parties and common rights between the parties, I do not see any reason to re-examine the facts or evidence on record. There is no illegality or perversity in the reasons recorded by both courts. The only objection raised to the findings/observations on facts in the impugned judgments is no ground to entertain the Second Appeal, as the same does not raise any substantial question of law.

5. The arguments made on behalf of the appellant would not require any consideration by this court in view of the concurrent findings of facts. The second appeal does not raise any substantial question of law. Hence, the second appeal is dismissed.

(GAURI GODSE, J.)